

6/9/88
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ACTION ARA-16

INFO	OCT-01	ADS-00	INR-10	CIAE-00	ICA-11	DODE-00	H-01
	NSAE-00	SY-05	HA-06	L-03	INSE-00	PA-01	DCT-02
	VO-05	CA-01	SYE-00	SP-02	SPRS-02	/066 W	

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P R 092006Z JUN 81
FM AMEMBASSY BUENOS AIRES
TO SECSTATE WASHDC PRIORITY 9850
INFO AMEMBASSY MONTEVIDEO
USCINCSO QUARRY HTS
USCINCLANT NORFOLK VA

ARGENTINA PROJECT (S200000044)
U.S. DEPT. OF STATE, A/RPS/IPS
Margaret P. Grafeld, Director
☒ Release ☐ Excise ☐ Deny
Exemption(s): _____
Declassify: ☐ In Part ☒ In Full
☐ Classify as ☐ Extend as ☐ Downgrade to _____
Date _____ Declassify on _____ Reason _____

[REDACTED] BUENOS AIRES 04312

CINCSO FOR INTAFF, CINCLANT FOR POLAD

E.O. 12065: GDS 6/9/87 (FRIEDMAN, TOWNSEND B.) OR-P
TAGS: SHUM AR
SUBJECT: PEN PRISONER IS RELEASED

REF: BUENOS AIRES 4054 (NOTAL)

1. (U) BENITO ALBERTO MOYA WAS GRANTED PAROLE (LIBERTAD VIGILADA) JUNE 7 BY THE GOA.

2. [REDACTED] COMMENT. PAROLE AND RIGHT OF OPTION WERE THE TWO CHOICES GIVEN THE GOVERNMENT BY THE SUPREME COURT WHEN IT DECLARED ILLEGAL MOYA'S CONTINUED DETENTION UNDER PEN. INTERESTINGLY, THE DECREE ORDERING MOYA'S PAROLE STATES THAT "A DETAILED ANALYSIS" OF MOYA'S SITUATION "COUNSELS A MODIFICATION" IN MOYA'S ARREST STATUS...A SITUATION THAT IS ALSO CONTEMPLATED IN THE DECISION OF THE SUPREME COURT" IN THIS CASE. THUS, THE GOA LEAVES AMBIGUOUS WHETHER IT IS ACCEPTING THE SUPREME COURT'S AUTHORITY IN THIS MATTER OR IS ACTING ON ITS OWN. THIS AMBIGUITY MAY BE DIRECTED AT THE MILITARY CRITICS OF [REDACTED]
[REDACTED]

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THE COURT'S ORDER -- AND THE GOVERNMENT'S SEEMING ACCEPTANCE OF IT. IT WILL BE RECALLED THAT WHEN THE

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GOA RELEASED TIMERMAN IT DID SO ON ITS OWN AUTHORITY WITHOUT WRITTEN REFERENCE TO THE SUPREME COURT'S ORDER IN THIS MATTER.

3. [REDACTED] NEVERTHELESS, THE COURT'S ORDER AND THE GOVERNMENT'S SEEMING ACCEPTANCE OF IT, HOWEVER DRESSED WITH FACE-SAVING, SEEMS TO US VERY IMPORTANT. TOGETHER THE GOVERNMENT AND THE COURT HAVE ACCEPTED, IN EFFECT, THE PRINCIPLE OF JUDICIAL REVIEW OF THE OVER 600 CASES OF PRISONERS WHO ARE BEING HELD UNDER PEN WITHOUT CONVICTION OR TRIAL. HITHERTO, THESE CASES HAVE EFFECTIVELY BEEN BEYOND THE COURTS AND UNDER THE SOLE PURVIEW OF THE MILITARY. THE SUPREME COURT'S INTERVENTION IN THIS CASE WAS NOT EASILY ACCEPTED BY THE MILITARY -- THAT THE COURT PREVAILED IS A SIGNIFICANT STEP TOWARD THE RETURN OF THE RULE OF LAW.

4. [REDACTED] THE COURT MADE IT CLEAR THAT THE MOYA CASE WAS NOT A GENERALIZED PRECEDENT FOR ALL PEN PRISONERS. THIS ASEPCT WAS UNDERLINED BY A JUNE 8 LOWER COURT'S DECISION WHICH SUSTAINED THE CONTINUED DETENTION OF A PEN PRISONER WHO IS BEING HELD ON THE PEN POWERS AFTER FINISHING HIS SENTENCE. IN EFFECT, THE LOWER COURT APPLIED THE MOYA DECISION'S MEASURE OF REASONABLENESS AND ACCEPTED THE GOVERNMENT'S ARGUMENT THAT THIS PARTICULAR PRISONER IS TOO DANGEROUS TO BE FREED. THUS THE LOWER COURT SUSTAINED THAT HIS CONTINUED DETENTION UNDER PEN IS CONSTITUTIONAL IN THIS CASE. INTERESTINGLY, AS IN
[REDACTED]
[REDACTED]

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THE MOYA CASE, REPORTS PREPARED BY THE AUTHORITIES ON THE PRISONER'S BEHAVIOR WHILE IN DETENTION APPARENTLY WEIGHED HEAVILY IN THE COURT'S DECISION.
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